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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/663,950

09/16/2003

Daniel J. de Waal

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EXAMINER

DEODHAR, OMKAR A

ART UNIT

PAPER NUMBER

3714

NOTIFICATION DATE

DELIVERY MODE

09/11/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@wavsip.com

## Office Action Summary

Application No.

10/663,950

Applicant(s)

DE WAAL ET AL.

Examiner

OMKAR A. DEODHAR

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,7,9-20,23,26-32,34,37,39-50,53 and 56-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,7,9-20,23,26-32,34,37,39-50,53,56-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

**Non-Final Rejection**

***Response to Amendment & Arguments***

Applicant argues that Walker does not disclose a progressive bonus game that is incremented based upon a stored first set of game outcomes associated with a set of participating progressive players from play of a game at a first enterprise & based upon a stored second set of game outcomes associated with play of a second game associated with a second enterprise. (Remarks, Page 14.) Examiner agrees. That is why Walker was modified with secondary references. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that Walker fails to disclose a time limit in which gaming outcomes must occur to qualify for a progressive bonus & points to Walker's Figure 5a showing non-solo games with no game play time limit. (Remarks, Page 14). While this may be accurate, Walker nevertheless discloses time periods during which gaming requirements must be competed within to initiate the secondary, bonus game. (See Walker Col. 9. Lines 10-29.) This means that gaming outcomes must occur within a prescribed time limit to play bonus games.

Applicant's arguments about Boushy (Remarks, Pages 14-15) are moot in view of the new grounds of rejection. Applicant's amendment requiring the tracking system for progressive bonus awards be maintained by an enterprise organizationally distinct

from the first & second enterprise overcomes Boushy. However, after further search, U.S. Patent 5,472,194 to Breeding was discovered. Breeding teaches progressive jackpots where multiple gaming tables at multiple facilities are linked to a central computer handling the progressive game. The central computer is located at a site separate from all of the facility computers. (See Breeding Abstract, Figure 4 & Col. 5. Lines 65-67.) Breeding is interpreted as teaching a progressive game maintained by an enterprise organizationally distinct from the first & second enterprise.

Applicant's argument about McCrea & how it is impractical & almost impossible to allow a player to participate in a game at one enterprise, then allow that player to go to a second enterprise while allowing him to be eligible for the accumulated jackpot from the first enterprise (Remarks, Page 15) appears to overlook McCrea's relevant teaching, (i.e., that it was known in the art prior to Applicant's invention to fund progressives based on gaming outcomes). Whereas many prior art systems use portions of player wagers to fund progressives, McCrea uses gaming outcomes to do the same. Modifying Walker in view of Breeding with McCrea's progressive funding scheme yields the expected results of funding a progressive. Additionally, since money is fungible, the same predictable results are achieved whether one funds the progressive based on portions of player wagers or based on gaming outcomes.

Finally, Applicant's argument about Acres' consolation pool failing to be a portion of the progressive bonus pool (Remarks, Page 16) is persuasive. However, after further search, U.S. Patent 6,210,276 to Mullins was discovered. Mullins' consolation prizes are

deducted from the same progressive pool from which the progressive prizes are awarded. (See Mullins Col. 19. Lines 20-26).

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1, 2, 4, 7, 13-15, 31, 32, 34, 37 & 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (US 6,692,353 B2) in view of Breeding (US 5,472,194) & McCrea (US 6,346,044).**

**Regarding claims 1 & 31,** Walker discloses receiving a first set of game outcomes from play of a game associated with a first slot machine, storing the first set of game data in a database, receiving a second set of game outcomes from play of a second game associated with a second slot machine and storing the second set of game outcomes in the database. Specifically, Walker discloses a bonus game wherein a player may obtain game outcomes from a plurality of slot machines (Walker col. 2, lines 31-33). The game outcomes are then stored in a database (Walker, Figs. 6A-6C). The game play outcomes comprise final and intermediary outcomes, and the bonus is awarded at least in part on the intermediary outcomes. For instance, in the game where a player must obtain 100 lemons, the first outcome is obtaining the first lemon and the last outcome is obtaining the 100<sup>th</sup> lemon. Lemons 2-99 are intermediate outcomes, but are still necessary for awarding the bonus. Walker further discloses that the bonus may be issued to a set of participating players (col. 14, lines 25-39) and that the bonus parameter set may include a timer period in which both sets of game outcomes must

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occur (col. 9, lines 11-15). Additionally, in Col. 5. Lines 59-67, Walker discloses extensive player tracking.

Walker does not disclose storing game outcomes received from a first enterprise, and storing game outcomes received from a second enterprise independent of the first in a database maintained by an enterprise organizationally distinct from the first & second enterprises.

Breeding teaches progressive jackpots where multiple gaming tables at multiple facilities are linked to a central computer handling the progressive game. The central computer is located at a site separate from all of the facility computers. (See Breeding Abstract, Figure 4 & Col. 5. Lines 65-67.) Breeding therefore teaches a progressive game maintained by an enterprise organizationally distinct from the first & second enterprise.

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to combine the gaming outcome storage of Walker with Breeding's multiple facility progressive system. This modification yields the expected results of expanding the number of machines participating in the game thereby increasing the size of the pool, and ultimately, increasing casino revenue.

Walker & Breeding do not teach awarding a progressive bonus that is incremented based upon the stored first set of game outcomes associated with a set of participating progressive bonus players and the stored second set of game outcomes associated with the set of participating progressive bonus players.

McCrea teaches a progressive jackpot that may be incremented upon the occurrence of certain game outcomes; for instance if the dealer busts in a game of blackjack (McCrea, Fig. 6c, stage 672-675). Since players are associated with the game & are playing for the progressive bonus, game incrementing outcomes are interpreted as being associated with players. McCrea's relevant teaching is that it was known in the art prior to Applicant's invention to fund (increment) a progressive based on gaming outcomes. Whereas many prior art systems use portions of player wagers to fund progressives, McCrea uses gaming outcomes to do the same.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the system taught by Walker & Breeding with McCrea's progressive jackpot. Modifying Walker in view of Breeding with McCrea's progressive funding scheme yields the expected results of funding a progressive. Furthermore, since money is fungible, the same predictable results are achieved whether one funds the progressive based on portions of player wagers or based on gaming outcomes. The progressive would work using Walker's first & second sets of game outcomes (described above.)

Further, since Walker teaches that a bonus parameter set may include a time period in which the outcomes in the first set of game outcomes occurred and the outcomes in the second set of game outcomes occurred (Walker, col. 9, lines 10-32) & in view of the progressive game taught by McCrea, the prior art combination teaches that the progressive bonus parameter set includes a time period in which the outcomes

in the first set of game outcomes occurred and the outcomes in the second set of game outcomes occurred.

**Regarding claims 2 & 32**, Walker discloses that game outcomes are stored in a database associated with an identity of a player (col. 10, lines 11-25).

**Regarding claims 4 & 34**, a player may be awarded a bonus based on the first set of game outcomes and the second set of game outcomes associated with a player. As disclosed in Walker, a player's gaming outcomes are stored for each play session at a slot machine and a bonus may be issued based upon said sets of gaming outcomes (col. 14, lines 25-39).

**Regarding claims 7 & 37**, the bonus parameter set may include a minimum-qualifying wager. This is true of Walker, as the slot machine requires a minimum wager to be made in order to proceed with play of the primary game, and because the bonus is awarded based on the outcomes of the primary game, a minimum wager must be made in order to qualify for the bonus.

**Regarding claims 13 & 43**, wherein the first and second set of game outcomes comprise winning outcomes and losing outcomes, several of the games disclosed by Walker involve obtaining a predetermined number of symbols, as can be seen in Fig. 5B, wherein a bonus game is disclosed wherein obtaining 100 lemons qualifies a player for an award. The lemons may be obtained in any number of slot machine reel display configurations, including non-winning configurations. For instance a player may obtain a reel configuration of cherry, lemon, and bar, which may not qualify for an award in the primary game payable but puts the player at having obtained 100 lemons, earning them



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a bonus rewards. Therefore, the gaming outcomes may comprise winning and non-winning configurations.

**Regarding claims 15 & 45**, Walker discloses player tracking including registration. (Walker Col. 5. Lines 59-67.

**Regarding claims 14 & 44**, Walker does not teach live table games. McCrea teaches a live table game. (See McCrea, Abstract.) It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to use Walker's system in live table games, as taught by McCrea. So long as the game table featured player tracking devices to communicate player progress to a central server, this would function in the same manner as Walker's slot machine embodiments. This yields predictable results.

**Claims 9-12 & 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (US 6,692,353 B2) in view of Breeding (US 5,472,194 & McCrea (US 6,346,044), as applied to claim 1, in yet further view of Mullins (US 6,210,276).**

**Regarding claims 9 & 39**, the prior art combination of Walker, Breeding & McCrea teaches the invention as described with respect to the claims above. However, these references do not teach first & second portions of the progressive bonus. Specifically, the references are silent with respect to:

a first portion of the progressive bonus is awarded to one of the participating players based upon the stored first set of game outcomes associated with the one of the

participating players and the stored second set of game outcomes associated with the one of the participating players and a first award bonus parameter set; and

a second portion of the progressive bonus is awarded to a subset of the set of participating progressive bonus players based upon the stored first set of game outcomes associated with a subset of the set of participating bonus players and the stored second set of game outcomes associated with the subset of the set of participating bonus players and a second award bonus parameter set.

Mullins discloses awarding a progressive jackpot bonus prize (col. 7, line 65 – col. 9 line 12), wherein a first set of players is awarded one bonus and a secondary subset of eligible players are awarded a second bonus, referred to as a consolation prize. Mullins' consolation prizes are deducted from the same progressive pool from which the progressive prizes are awarded. (See Mullins Col. 19. Lines 20-26).

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the progressive gaming system taught by the prior art combination of Walker, Breeding & McCrea to divide the progressive award among one set of players & a subset of another group of participating players as taught by Mullins. Distributing a progressive award in such a manner yields the predictable results of consoling non jackpot winning players by providing them an award from the same pool they contributed to.

**Regarding claims 10 & 40,** Walker discloses that a first portion of the bonus may be awarded to one of the participating player based on their accumulated game outcomes and that a second portion of the bonus may be awarded to a subset of the

players based upon their accumulated game outcomes in col. 15, lines 21-42. Further, note the discussion of Mullins' bonus progressive & consolation, discussed above.

**Regarding claims 11 & 41**, Walker discloses that the games are poker games (col. 3, lines 54-57) and the qualifying outcome is a number of poker hands (col. 10, lines 38-47).

**Regarding claims 12 & 42**, wherein a selected player may be awarded a second bonus based upon the first and second set of game outcomes and a second bonus parameter set, in Fig. 5B Walker discloses that upon obtaining 6 jackpots (i.e. bonuses) with payouts of more than 20 tokens, a player may be awarded a second bonus of \$30. Further, note the discussion of Mullins' bonus progressive & consolation, discussed above.

**Claims 16-20, 23, 26-30, 46-50, 53 & 56-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (US 6,692,353 B2) in view of McCrea (US 6,346,044) in further view of Celona (US 5,564,700).**

**Regarding claims 16, 23, 27, 28, 46, 53 & 58**, Walker discloses receiving a first set of game outcomes from play of a game associated with a first slot machine, storing the first set of game data in a database, receiving a second set of game outcomes from play of a second game associated with a second slot machine and storing the second set of game outcomes in the database. Specifically, Walker discloses a bonus game wherein a player may obtain game outcomes from a plurality of slot machines (Walker col. 2, lines 31-33). The game outcomes are then stored in a database (Walker, Figs. 6A-6C). The game play outcomes comprise final and intermediary outcomes, and the

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bonus is awarded at least in part on the intermediary outcomes. For instance, in the game where a player must obtain 100 lemons, the first outcome is obtaining the first lemon and the last outcome is obtaining the 100<sup>th</sup> lemon. Lemons 2-99 are intermediate outcomes, but are still necessary for awarding the bonus. Walker further discloses that the bonus may be issued to a set of participating players (col. 14, lines 25-39) and that the bonus parameter set may include a timer period in which both sets of game outcomes must occur (col. 9, lines 10-29).

Walker does not teach awarding a bonus that is incremented based upon his game play outcomes.

McCrea teaches a progressive jackpot that may be incremented upon the occurrence of certain game outcomes; for instance if the dealer busts in a game of blackjack (McCrea, Fig. 6c, stage 672-675). Since players are associated with the game & are playing for the progressive bonus, game incrementing outcomes are interpreted as being associated with players. McCrea's relevant teaching is that it was known in the art prior to Applicant's invention to fund (increment) a progressive based on gaming outcomes. Whereas many prior art systems use portions of player wagers to fund progressives, McCrea uses gaming outcomes to do the same.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the system taught by Walker with McCrea's progressive jackpot. Modifying Walker with McCrea's progressive funding scheme yields the expected results of funding a progressive. Additionally, since money is fungible, the same predictable results are achieved whether one funds the progressive based on portions

of player wagers or based on gaming outcomes. The progressive would work using Walker's first & second sets of game outcomes (described above.)

While Walker & McCrea teach the invention substantially as claimed, they do not teach that the system includes first & second progressive jackpots for awarding the bonuses to players having qualifying outcomes. In a related invention, Celona teaches a progressive system where multiple progressive jackpots are accumulated & distributed. (Celona, Figure 2 & Col. 5. Lines 12-30).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the system taught by Walker in view of McCrea to feature multiple progressives, as taught by Celona. Payout to respective jackpot qualifiers would work just as one would expect it to – players with game data matching qualifying progressive game data would be awarded the bonuses.

**Regarding claims 17 & 47**, Walker discloses that the bonus may be awarded if the game play outcomes match the qualifying game play outcome requirement within a qualifying time period (See col. 9, lines 12-15).

**Regarding claims 18 & 48**, Walker discloses the qualifying game play outcome requirement is a combination of game play outcomes (Fig. 5B).

**Regarding claims 19 & 49**, Walker discloses the combination of game play outcomes includes a sequence of game play outcomes (col. 8, lines 28-41).

**Regarding claims 20 & 50**, the prior art combination teaches table games including poker. Wildcards game play outcomes are used in poker games.

**Regarding claims 29 & 59**, Walker does not teach live table games. McCrea teaches a live table game. (See McCrea, Abstract.) It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to use Walker's system in live table games, as taught by McCrea. So long as the game table featured player tracking devices to communicate player progress to a central server, this would function in the same manner as Walker's slot machine embodiments. This yields predictable results.

**Regarding claims 30 & 60**, Walker discloses player tracking including registration. (Walker Col. 5. Lines 59-67.)

**Regarding claims 26, 56 & 57**, McCrea's increment qualifying amount is a pre-specified final outcome (a dealer busts & a pre-specified amount of the ante is added to the jackpot). See also the rejection of claim 46, above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OMKAR A. DEODHAR whose telephone number is (571)272-1647. The examiner can normally be reached on M-F: 8AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on 571-272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/OAD/

/Corbett Coburn/  
Primary Examiner  
AU 3714